C.F-100-00

6

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1362 OF 2001

PETITIONER :- Tejram Patel,
Son of Shri Baluram Patel,
Aged about 30 years,
Resident of Village Gejamuda,
Post Kirodimalnagar,
District Raigarh,
Chhattisgarh.

P.R. No. 12-7-01
Presented by Shri R.P. Bhatt
Date 12.7.01

V E R S U S

RESPONDENTS :- (1) Additional Commissioner,
Bilaspur Division,
Bilaspur, Chhattisgarh.

(2) Additional Collector,
Raigarh, District Raigarh,
Chhattisgarh.

(3) Janpat Panchayat Raigarh,
Through: its Chief Executive
Officer, Raigarh.
Chhattisgarh.

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1362 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**13/01/2005**: -

Shri B.D. Guru learned counsel for the petitioner.

Shri Sandeep Dubey, learned Panel Lawyer, for the State/respondents 1and 2.

Shri S.K. Beriwal learned counsel for respondent No.3.

Heard finally with the consent of the respective parties.

Brief facts of the case are that in pursuance of the advertisement issued by the Janpad Panchayat, Raigarh for appointment to the post of Shiksha Karmi Grade-III under the Rules of 1997, the petitioner applied seeking his candidature in the year 1998. The selection list was published on 08/07/1998. This list was for fifty-two candidates.

Learned counsel appearing for the petitioner submits that out of fifty-two, seven candidates did not join on the said post and seven fresh candidates were appointed from amongst the wait list candidates on 14/09/1998. He further submits that against seven persons appointed vide Annexure-P/4, two persons did not join on the said post of Shiksha Karmi Grade-III. To meet the situation, a meeting of Janpad Panchayat took place on 28/01/1999 and two persons namely Smt. Pushpa Kankadwal and Jayant Kumar Patel were again appointed on 06/02/1999 vide Annexutre-P/5. Learned counsel submits that the grievance of the petitioner is that though he was at Sr. No.1 of the waiting list of the general candidates, his case was not considered and other persons by other means were appointed to fill up those posts which could not be filled up in the first stroke of appointment. Further submission of the petitioner is that though vide order dated 15/09/1998

GRPRJ—FS/350—12/2000—50,000.

(47)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1362 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —2— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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(Annexure-P/14) eight more Shiksha Karmis were appointed, but no action was taken on the case of the petitioner. He also submits that looking to all these situation, the petitioner preferred an appeal before the Collector, Raigarh. The Collector, Raigarh dismissed the appeal of the petitioner vide order dated 21/02/2000 (Annexure-P/15). Learned counsel further submits that against the aforesaid order passed by the Collector, a revision was preferred before the Commissioner, Bilaspur Division, Bilaspur. But the revision was also dismissed vide order dated 27/04/2001 (Annexure-P/1).

After bare perusal of the order of the Commissioner, it transpires that an application under Section 5 of the Limitation Act was filed along with the memo of revision and the learned Commissioner after hearing this application dismissed the same and in consequence the entire revision was dismissed. No reasons for dismissal of the aforesaid application was assigned by the Commissioner in the aforesaid order dated 27/04/2001. A perusal of the order dated 21/02/2000 passed by the Collector shows that, in fact, the petitioner had filed this appeal against a resolution dated 28/01/1999. Learned Collector has observed that according to the provisions of the Rules framed under the M.P. Panchayat Raj Adhiniyam, thirty days' time has been prescribed for filing of the appeal. This appeal was filed on 05/01/2000. Learned Collector has also held that the appeal was apparently barred by limitation and there was no application for condonation of delay. Since the appeal was barred by limitation, the same was dismissed in the first instance against which the said revision before the Commissioner was

GRPRJ—FS/350—12/2000—50,000.

(48)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1369 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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filed. Learned counsel further submits that in fact, the case of the petitioner remained untouched in both the Courts on the basis of technicalities of law. He prays that an opportunity may be awarded to the petitioner to file an application for condonation of delay in relation to the appeal filed before the Collector vide Case No.6A-89/99-2000 and the Collector may kindly be directed to hear this application and decide the point of limitation.

In the opinion of this Court, the technicalities of law are not to be brought in the process of advancement of justice. If by mistake or for any other reason or for lack of knowledge a duly constituted case is not filed before a Court of law, it always affects the right of the parties and the said party is deprived from getting justice and right of hearing on merits of the matter.

Considering the facts and circumstances of the case and further considering the broad features of the matter, it is apparent that none of the statutory authorities have touched the case of the petitioner on merits. In the opinion of this Court ends of justice would be served if an opportunity is awarded to the petitioner by remanding the matter before the Collector, Raigarh.

In the result, the impugned orders (Annexure-P/15 and P/1) passed by the Collector as well as the Commissioner, respectively, are quashed. The matter is remanded back to Collector, Raigarh. The Collector, Raigarh is directed to re-open the matter namely Appeal Case No.6A-89/99-2000 on his file. The petitioner is directed to file an

GRPRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

49

मामला क्रमांक W.P. 1362 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —4— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | appropriate application for condonation of delay along with suitable affidavit before the Collector within a period of one month from today. If such an application is filed, the Collector after hearing the parties concerned shall decide the same on its own merits in accordance with law.<br><br>With the aforesaid directions, the petition stands disposed of finally. Let a copy of this order be sent to the Collector immediately who shall fix the appeal for appearance/hearing of the parties on 07/02/2005. Accordingly, the parties are also directed to appear before the Collector on 07/02/2005.<br><br>Sd/-<br>Sunil Kumar Sinha<br>Judge<br><br>Brajesh. | |

GRPRJ—FS/350—12/2000—50,000.

18/1/05